

James D. Gilson (5472)
james.gilson@dentons.com
DENTONS DURHAM JONES PINEGAR P.C.
111 South Main Street, Suite 2400
Salt Lake City, UT 84111
Telephone: (801) 415-3000

Andrew V. Wright (11071)
andy.wright@dentons.com
David B. Nielson (16531)
david.nielson@dentons.com
DENTONS DURHAM JONES PINEGAR P.C.
1557 W. Innovation Way, Suite 400
Lehi, Utah 84043
Telephone: (801) 375-6600

Attorneys for Defendant Colliers International

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PATTI KLAIR, ROBERT MYERS,
ROBERT BARNES, ERIC CARNRITE,
ELIZABETH HILL-D'ALESSANDRO,
ROBERT TANNEHILL, DITAS
TANNEHILL, JOSE REMENTERIA,
TEENA REMENTERIA, CHARLES
BRAUER, LAURA BRAUER,
KAREN MARION, KATHERINE
MADERA, CARL MCQUEARY, LYNN
MCQUEARY, DONALD PATTERSON,
KURTIS TRENT MANNING, TONY
SCHAKER, PATRICK WHITE,
HILDEGARD WHITE, QUEST REALTY
TRUST, SECURE STORAGE LLC, KURTIS
TRENT MANNING LIVING TRUST,

Plaintiffs,

v.

KEVIN LONG; MILLCREEK
COMMERCIAL, LLC; COLLIERS

**RESPONSE TO MOTION TO
WITHDRAW AS COUNSEL FOR
DEFENDANT MILLCREEK
COMMERCIAL PROPERTIES, LLC**

Case No. 2:23-cv-00407-AMA-CMR

Judge Ann Marie McIff Allen

Magistrate Judge Cecilia M. Romero

INTERNATIONAL; ANDREW BELL;
TREVOR WEBER; SPENCER TAYLOR;
BLAKE MCDUGAL; SCOTT
RUTHERFORD; EQUITY SUMMIT
GROUP; ELEVATED 1031,

Defendants.

Defendant Colliers International, through its counsel of record, hereby responds to the Motion to Withdraw as Counsel for Defendant Millcreek Commercial Properties, LLC (“Millcreek”) that was filed by its counsel of record, Parr Brown Gee & Loveless. The sole purported reason given for the withdrawal request is that “Millcreek has ceased operations.” Even if true, companies that are no longer operating can still be, and often are, still represented in litigation. *See*, Utah Code 48-3a-701 - 711 (rules governing winding up a limited liability companies, including obligations to discharge debts and liabilities); *Tracy-Burke v. Dept. of Employment Security*, 699 P.2d 687 (Utah 1985) (an entity “in matters in court can act only through licensed attorneys”).

The Complaint in this action alleges that Millcreek and its principal, defendant Kevin Long, played key roles in the alleged wrongful conduct. The Motion to withdraw leaves too many unanswered questions, including:

1. Is Millcreek going to hire new counsel to replace Parr Brown? If so, such counsel should substitute in now before allowing Parr Brown to withdraw to avoid case delays.
2. What and where are Millcreek’s assets?
3. What persons or entities are the successors to Millcreek?

Millcreek is not a dissolved entity. *See* 1/29/25 printouts from the Utah Division of Corporations, (**Exhibit A** hereto), showing Millcreek's status as "Current," and listing KGL Real Estate Development, LLC ("KGL Real Estate") as one of its members. Defendant Kevin Long is the registered agent and sole member of KGL Real Estate. (**Exhibit B** hereto). Kevin Long is also the registered agent of his related entity KGL Advisors, LLC ("KGL Advisors") (**Exhibit C** hereto). Defendant Long is also the Manager and registered agent of another entity related to this matter, Millrock Investment Fund 1 Management, LLC ("Millrock") (**Exhibit D** hereto).

In this case, the plaintiffs' proposed First Amended Complaint seeks to add KGL Real Estate and KGL Advisors as additional defendants, alleging alter ego and successor liability:

72. On information and belief, and based on the fact that in about late 2024 Millcreek Commercial indicated that it was closing but that KGL Advisors would assist Millcreek Commercial's former clients and that KGL Advisor's website adopted and incorporated large portions of Millcreek Commercial's website, KGL Advisors is an alter ego of Millcreek Commercial, continuing substantially similar operations and activities with substantially similar personnel, and should be held jointly and severally liable for any judgment against Millcreek Commercial in this case.

Similarly, in the case of *Devlin et al v. Colliers, et al.*, D. Idaho Case No. 1:24-cv-00457-DCN, the plaintiffs' First Amended Complaint names KGL Advisors, LLC as an additional defendant, and alleges:

13. As of December 3, 2024, Millcreek Commercial's website millcreekcommercial.com states: "Millcreek Commercial has ceased operations. Our friends at KGL Advisors have agreed to assist Millcreek Commercial clients. The Millcreek agents that moved to KGL Advisors can assist you with Tenant in Common Investments from that brokerage." Plaintiffs are informed and believe, and on that basis allege, that KGL Advisors LLC is a new entity taking over operations of Millcreek Commercial with the same employees and agents. KGL Advisors was created to obscure the assets of Millcreek Commercial from pending lawsuits, while continuing substantially similar operations. KGL Advisors' website includes the same blog posts that were previously on the Millcreek Commercial website, including one dated April 30, 2019 announcing a marketing alliance with Elevated 1031 Exchange, even though KGL Advisors was not created or registered until November 11, 2024 as set forth on the Utah

Secretary of State website. Plaintiffs are informed and believe, and on that basis allege, that KGL Advisors is an alter ego of Millcreek Commercial such that it must be held liable for jointly and severally for Millcreek Commercial's wrongdoing.

14. On December 7, 2024, Kevin Long informed certain Plaintiffs of Millcreek Commercial's closure. He represented: "I am sorry to inform you and the owners of the Draper Surgery Center that Millcreek Commercial Properties, LLC, is currently insolvent and the difficult decision has been made to close down the business and dissolve the entity. Millcreek was the marketing arm of an investment fund and when that fund decided to stop developing and marketing real estate products due to various market evolutions, the viability of Millcreek's business was decimated. We tried to continue on the business for the last few months but it has become apparent that there is not a path forward to solvency. Millcreek Commercial has no liquid assets and limited creditors outside their real estate lease obligation. The entity will be formally dissolved as of December 31, 2024. We do not anticipate any revenue for distribution."

If Millcreek's assets and/or operations have been taken over by one of Defendant Long's other entities, such as KGL Real Estate, KGL Advisors, and/or Millrock, then instead of Millcreek having its counsel withdraw in this matter, perhaps those entities should be ordered joined to this action as additional defendants under Fed. R. Civ. Pro. 19, 20, and/or 25 if they aren't already defendants.

Perhaps at the February 19th, 2025, Hearing on the Motion these questions can be addressed.

DATED this 31st day of January, 2025.

DENTONS DURHAM JONES PINEGAR P.C.

/s/ James D. Gilson

James D. Gilson

Andrew Wright

David B. Nielson

Attorneys for Defendant Colliers International

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January 2025, I caused a true and correct copy of the **RESPONSE TO MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT MILLCREEK COMMERCIAL PROPERTIES, LLC** to be filed via the Court's electronic filing system, which automatically provides notice to counsel of record.

/s/ James D. Gilson